

Stipulated Price Contract



STANDARD DOCUMENT PDSB-2011

Stipulated Price Contract

CONSISTING OF DEFINITIONS, CONTRACT REQUIREMENTS, AND AGREEMENT BETWEEN BOARD AND CONTRACTOR. THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

For:

INSTRUCTIONS FOR COMPLETION OF THIS DOCUMENT:

Only the originals which have the cautionary note printed in blue and which have been completed in full, signed and witnessed, shall be accepted. No reproductions of any kind shall be accepted.

Agreement between Board and Contractor must be completed in ink, neatly printed or typed.

Any modifications, including qualifications, additions or deletions to the contents of this Document must be initialed and dated in ink, by the company's signing officer.

Incorporated Companies must affix their corporate seal under the hand of their proper signing officers.

The information contained in this document is confidential and proprietary and remains the property of the Peel District School Board. This document may not be used in any way, nor can it be transferred or reproduced in whole or in part, nor revealed to others without prior written consent of the facilities services department, design and construction. by receipt of this document, the receiver agrees to this condition.

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DEFINITIONS

The following Definitions shall apply to all Contract Documents:

1. Contract

The Contract is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents and represents the entire agreement between the parties.

2. Contract Documents

The Contract Documents consist of those Documents listed in **ARTICLE 3 of the AGREEMENT -CONTRACT DOCUMENTS** and amendments agreed upon between the parties.

3. Board

The Board is the Peel District School Board, identified as such in the Agreement.

4. Consultant

The Consultant is the person or entity identified as such in the Agreement and is an Architect or Engineer or entity licensed to practice in the Province of Ontario, and is referred to throughout the Contract Documents as if singular in number and neuter in gender. The term Consultant means the Consultant or the Consultant's authorized representative. If the Consultant is not identified as a separate entity in the Agreement, then the term Consultant means the Board's authorized agent or representative as designated to the Contractor in writing.

5. Contractor

The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and both masculine and feminine, as the context requires. The term Contractor means the Contractor or the Contractor's authorized representative as designated to the Board in writing.

6. Sub-contractor

A Sub-Contractor is a person or entity having a direct Contract with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design or as otherwise required for the Work. The term Sub-Contractor is referred to throughout the Contract Documents as if singular in number and both masculine and feminine, as the context requires. A person or entity having a direct Contract with a Sub-Contractor (i.e. a sub-Sub-Contractor) as well as those having a direct Contract with a sub-Sub-Contractor, etc., in accordance with the terms of this Definition shall be considered to be the same as Sub-Contractors to the Contractor.

7. The Project

The Project means the total construction contemplated of which the Work may be the whole or a part.

8. The Work

The Work means the total construction and related services required by the Contract Documents.

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9. Products

Product or Products means material, machinery, equipment and fixtures forming the Work but does not include machinery and equipment used to prepare, fabricate, convey or erect the Work, which are referred to as construction machinery and equipment.

10. Provide

Provide means to supply and install.

11. Other Contractor

Other Contractor means a person, or entity employed by or having a separate Contract directly or indirectly with the Board for work other than that required by the Contract.

12. Place of the Work

The Place of the Work is the designated site or location of the Project of which the Work may be the whole or a part. It is identified as such in **ITEM 1. of the Agreement - THE WORK**.

13. Contract Price

The Contract Price is the amount stipulated in **ITEM 4. of the Agreement - CONTRACT PRICE**.

14. Contract Time

The Contract Time is the time stipulated in Paragraph 1.2 of Item 1. of the Agreement - THE WORK from commencement of the Work to Substantial Performance of the Work

15. Working Day

Working Day means a day other than a Saturday, Sunday or a holiday, which is observed by the construction industry in the area of the Place of the Work.

16. Day

Day means a calendar day, including Saturday(s), Sunday(s) or holiday(s) observed by the construction industry in the area of the Place of the Work.

17. Site Instruction

A Site Instruction is an instruction, not involving adjustment in the Contract Price or Contract Time, in the form of specifications, drawings, schedules, samples, models or written instructions, consistent with the intent of the Contract Documents. It is to be issued by the Consultant to supplement the Contract Documents as required for the performance of the Work.

18. Change in the Work

Change or Changes in the Work means additions, deletions, or other revisions to the Work within the general scope of the Contract Documents.

19. Contemplated Change Order

A Contemplated Change Order is a written request for the pricing of a Change in the Work within the general scope of the Contract Documents. It is prepared by the Consultant and issued to the Contractor prior to approval of the

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change by the Board. A Contemplated Change Order must be confirmed with a properly prepared and signed Change Order, if it is to become an amendment to the Contract.

20. Change Order

A Change Order is a written amendment to the Contract, prepared by the Consultant and signed by the Board and the Contractor stating their agreement upon a Change in the Work, including the amount of the adjustment to the Contract Price, if any, and the extent of the adjustment in the Contract Time, if any.

21. Substantial Performance of the Work

Substantial Performance of the Work is as defined in the lien legislation applicable to the Place of the Work. Substantial Performance of the Work shall be deemed to have been reached when the Work or a substantial part thereof is ready for use or is being used for the purpose intended, and when the portion of the Work remaining to be done shall be capable of completion or correction at a cost of not more than 3% of the first \$1,000,000 of the Contract Price, and 2% of the next \$1,000,000 of the Contract Price, and 1% of the balance of the Contract Price, and is so certified by the Consultant.

22. Completion of the Contract

The Contract shall be deemed to be completed when the price of completion or correction of known defects is not more than the lesser of 1% of the Contract Price, or \$5,000.

23. 100% Completion

The Contract shall be deemed to be 100% completed when the completion or correction of all known defects and deficiencies is attained.

24. Approval

Wherever the words 'approved', 'reviewed', 'inspected', or other similar words or phrases are used, it shall be understood unless the Contract specifically provides otherwise, to mean that the material, item or procedure referred to shall be approved, reviewed or inspected by the Consultant.

25. Proper Invoice

A Proper Invoice shall include the following:

- Contractor invoices;
- The period in which services were supplied;
- How the work was authorized;
- Description of services or materials supplied;
- The amount payable;
- The contact information of the payment administrator;
- Any other prescribed information required by applicable lien legislation.

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THE REQUIREMENTS OF THE STIPULATED PRICE CONTRACT

(Hereinafter referred to as the Contract Requirements)

1. CONTRACT DOCUMENTS

- 1.1 The Contract Documents shall be signed in duplicate by the Board and the Contractor.
- 1.2 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all.
- 1.3 The intent of the Contract Documents is to include the labour, products and services necessary for the performance of the Work in accordance with these Documents. It is not intended, however, that the Contractor shall supply products or perform work not consistent with, covered by or properly inferable from the Contract Documents.
- 1.4 Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.5 References to the masculine or the singular shall be considered to include the feminine and the plural as the context requires.
- 1.6 In the event of conflicts between Contract Documents the following shall apply:
 - 1.6.1 figured dimensions shown on a Drawing shall govern even though they may differ from dimensions scaled on the same Drawing,
 - 1.6.2 Drawings of larger scale shall govern over those of smaller scale of the same date,
 - 1.6.3 Specifications shall govern over Drawings,
 - 1.6.4 the General Requirements - Division 1 of the Specifications shall govern over any other General Requirements of other Divisions,
 - 1.6.5 The Contract Requirements shall govern over Specifications.
 - 1.6.6 Supplementary Contract Requirements shall govern over the Contract Requirements and
 - 1.6.7 The executed Agreement between the Board and Contractor shall govern over all Documents. Notwithstanding the foregoing, documents of later date shall always govern.
- 1.7 If the Contractor finds discrepancies in, or omissions from, the Drawings, Specifications or other Contract Documents or has any doubt as to the meaning or intent of any part thereof, he or she shall at once notify the Consultant, who will forthwith provide written instructions or explanations. Neither the Board nor the Consultant will be responsible for oral instructions.
- 1.8 The Contractor shall be provided without charge with up to thirty (30) copies of the Contract Documents, and up to six (6) copies of all Detail Drawings for the performance of the Work. If additional copies of Drawings or Specifications or Detail Drawings are required by the Contractor, then they shall be provided by the Consultant at reproduction cost.
- 1.9 The Contractor shall keep one copy of current Contract Documents and Shop Drawings at the Place of the Work, in good order and available to the Consultant and his or her representatives. This requirement shall not be considered to include the executed set of Contract Documents. Only copies of Shop Drawings that

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have been reviewed by the Consultant, and which have not been required to be resubmitted, shall be permitted on site.

- 1.10 Drawings, specifications, models and copies thereof furnished by the Consultant are and shall remain his or her property with the exception of the signed contract sets belonging to each party to this Contract. Such documents and models are to be used only with respect to the Work and are not to be used on other work. Such documents and models are not to be copied or revised in any manner without the written authorization of the Consultant.
- 1.11 Models furnished by the Contractor at the Board's expense are the property of the Board.

2. ADDITIONAL INSTRUCTIONS

- 2.1 During the progress of the Work the Consultant will furnish to the Contractor such additional instructions to supplement the Contract Documents as may be necessary for the performance of the Work. Such instructions shall be consistent with the intent of the Contract Documents.
- 2.2 Additional instructions may be in the form of specifications, drawings, samples, models or other written instructions. They will be issued by the Consultant with reasonable promptness and in accordance with a schedule agreed upon for such instructions.
- 2.3 If the Contractor claims that any additional instruction involves extra cost under the Contract he or she shall give the Consultant written notice within the time limitation noted on the issued instruction or within ten (10) working days of the issued date if no limitation is noted and before proceeding to carry out the work. Any such claims shall be valid only if the procedures set out in the additional instruction and **ITEM 11 CHANGES IN THE WORK** and **ITEM 12 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK** have been followed.

3. CONSULTANT

- 3.1 The Consultant will provide administration of this Contract as described in the Contract Documents.
- 3.2 The Consultant will be the Board's representative during construction and until completion of any correction of defects under the provisions of **ITEM 29 - WARRANTY**, Paragraph 29.2, or until the issuance of the Final Certificate for Payment, whichever is later. The Board's instructions to the Contractor shall be forwarded through the Consultant. The Consultant will have authority to act on behalf of the Board only to the extent provided in the Contract Documents, unless otherwise modified by written agreement in accordance with Paragraph 3.13.
- 3.3 The Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs required for the Work in accordance with the applicable construction safety legislation, other regulations or general construction practice. The Consultant will not be responsible for or have control or charge over deficiencies in the Work or for the acts or omissions of the Contractor, his or her Sub-contractors or their agents, employees or other persons performing any of the Work.
- 3.4 The Consultant will visit the site at intervals appropriate to the progress of constructions to familiarize himself or herself with the progress and quality of the Work and to determine in general if the Work is proceeding in general conformity with the Contract Documents.
- 3.5 Based on the Consultant's observations and his or her evaluation of the Contractor's application for payment, the Consultant will determine the amounts owing to the Contractor under the Contract and will issue Certificates for Payment in such amounts, as provided in **ARTICLE 5 of the AGREEMENT -PAYMENT** and **ITEM 14 - CERTIFICATES AND PAYMENTS**.

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- 3.6 The Consultant will be, in the first instance, the interpreter of the requirements of the Contract Documents and shall make findings as to the performance thereunder by both parties to the Contract. Interpretations and decisions of the Consultant shall be consistent with the intent of the Contract Documents and in making his or her interpretations and findings he or she will not show partiality to either party.
- 3.7 Claims, disputes and other matters in question relating to the performance of the Work or the interpretation of the Contract Documents shall be referred initially to the Consultant in writing for his or her finding or the interpretation which he or she will give in writing within a reasonable time.
- 3.8 The Consultant will have authority to reject work which in his or her opinion does not conform to the requirements of the Contract Documents. Whenever he or she considers it necessary or advisable, he or she will have authority to require special inspection or testing of work whether or not such work be then fabricated, installed or completed. However, neither the Consultant's authority to act nor any decision made by him or her either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Consultant to the Contractor, his or her Sub-contractors, or their agents, employees or other persons performing any of the Work.
- 3.9 The Consultant will review and take appropriate action upon the Contractor's submittals such as shop drawings, product data, and samples in accordance with the requirements of the Contract Documents.
- 3.10 The Consultant will prepare Change Orders in accordance with the requirements of **ITEM 11-CHANGES IN THE WORK.**
- 3.11 The Consultant will conduct reviews of the Work to determine the dates of Substantial Performance of the Work and Completion of the Contract in accordance with the requirements of **ITEM 14 -CERTIFICATES AND PAYMENTS.** He or she will receive and review written warranties and related documents required by the Contract and provided by the Contractor and will forward such warranties and documents to the Board for its acceptance.
- 3.12 If the Board and the Consultant agree, the Consultant will provide at the site one or more project representatives to assist the Consultant in carrying out his or her responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the Contractor.
- 3.13 The duties, responsibilities and limitations of authority of the Consultant as set forth in the Contract Documents will not be modified or extended without the written consent of the Board, the Contractor and the Consultant, except as required by **ITEM 4 of the DEFINITIONS.** (Consultant as authorized representative of Board).
- 3.14 In the event of the termination of the employment of the Consultant, the Board shall immediately re-appoint or appoint another Consultant to whom the Contractor makes no reasonable objection and whose status under the Contract shall be that of the former Consultant.
- 3.15 Nothing contained in the Contract Documents shall create any contractual relationship between the Consultant and the Contractor, his or her Sub-contractors, his or her suppliers, or their agents, employees or other persons performing any of the Work.

4. DELAYS

- 4.1 If the Contractor is delayed in the performance of the Work by an act or omission of the Board, Consultant, Other Contractor, or anyone employed or engaged by them directly or indirectly contrary to the provisions of the Contract Documents, then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor. If warranted by the circumstances of a particular delay, the Contractor may be reimbursed by the Board for reasonable costs incurred by the Contractor as a result of such delay. Any claim for reasonable costs incurred shall be subject to the Consultant's approval, with final determination at the time of Substantial Performance.

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- 4.2 If the Contractor is delayed in the performance of the Work by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the Contractor or anyone employed or engaged by him or her directly or indirectly, then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor. If warranted by the circumstances of a particular delay, the Contractor may be reimbursed by the Board for reasonable costs incurred by the Contractor as the result of such a delay. Any claim for reasonable costs incurred shall be subject to the Consultants approval, with final determination at the time of Substantial Performance.
- 4.3 Nothing in Paragraphs 4.1 and 4.2 above affects in any way the normal process of calculation and certification of changes in the work, as specified in **ITEM 11-CHANGES IN THE WORK** and **ITEM 12-VALUATION AND CERTIFICATION OF CHANGES IN THE WORK**. Note specifically Paragraph 11.2 which stipulates that sum total of Change Orders shall be no basis for Contractor's right to claim for delay in the performance of the Work.
- 4.4 If the Contractor is delayed in the performance of the Work by labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized Contractor's Association, of which the Contractor is a member or to which the Contractor is otherwise bound), fire, unusual delay by common carriers or unavoidable casualties or, without limit to any of the foregoing, by a cause beyond the Contractor's control, then the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor, but in no case shall the extension of time be less than the time lost as the result of the event causing the delay, unless such shorter extension be agreed to by the Contractor. The Contractor shall not be entitled to payment for costs incurred as the result of such delays unless such delays are as the result of actions by the Board.
- 4.5 No extension shall be made for delay unless written notice of claim is given to the Consultant not later than fourteen (14) days after the commencement of delay, providing however, that in the case of a continuing cause of delay, only one notice of claim shall be necessary.
- 4.6 If no schedule is made under **ITEM 2 - ADDITIONAL INSTRUCTIONS**, no claim for delay shall be allowed because of failure to furnish instructions until fourteen (14) days after demand for such instructions has been made and not then unless such claim is reasonable.
- 4.7 The Consultant will not, except by written notice to the Contractor, stop or delay the Work pending instructions or proposed changes in the Work.

5. BOARD'S RIGHT TO PERFORM WORK OR STOP THE WORK OR TERMINATE CONTRACT

- 5.1 If the Contractor should be adjudged bankrupt, or makes a general assignment for the benefit of creditors because of his or her insolvency or if a receiver is appointed because of his or her insolvency, the Board may, without prejudice to any other right or remedy he or she may have, by giving the Contractor or receiver or trustee in bankruptcy written notice, terminate the Contract.
- 5.2 If the Contractor should neglect to prosecute the Work properly or otherwise fails to comply with the requirements of the Contract to a substantial degree and if the Consultant has given a written statement to the Board and Contractor that sufficient cause exists, the Board may notify the Contractor in writing that he or she is in default of his or her contractual obligations and instruct him or her to correct the default in the five (5) working days immediately following the receipt of such notice.
- 5.3 If the correction of the default cannot be completed in the five (5) working days specified, the Contractor shall be in compliance with the Consultant's instructions if he or she:
- 5.3.1 commences the correction of the default within the specified time, and
 - 5.3.2 provides the Consultant with an acceptable schedule for such correction, and

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- 5.3.3 completes the correction in accordance with such schedule.
- 5.4 If the Contractor fails to correct the default in the time specified or subsequently agreed upon, the Board, without prejudice to any other right or remedy it may have, may:
 - 5.4.1 correct such default and deduct the cost thereof from any payment then or thereafter due the Contractor provided the Consultant has certified such cost to the Board and the Contractor, or
 - 5.4.2 terminate the Contractor's right to continue with the Work in whole or in part or terminate the Contract.
- 5.5 If the Board terminates the Contractor's right to continue with the Work under the conditions set out in this Contract Requirement, it shall:
 - 5.5.1 be entitled to take possession of the premises and products and utilize the construction machinery and equipment, subject to the rights of third parties, and finish the Work by whatever method it may consider expedient but without undue delay or expense, and
 - 5.5.2 withhold further payments to the Contractor until the Work is finished, and
 - 5.5.3 upon issuance of the Final Certificate for Payment, charge the Contractor the amount which the full cost of finishing the Work as certified by the Consultant, exceeds the unpaid balance of the Contract Price (including compensation to the Consultant for his or her additional services and a reasonable allowance as determined by the Consultant to cover the cost of corrections to work performed by the Contractor that may be required under **ITEM 29 - WARRANTY**.) However, if such cost of finishing the Work is less than the unpaid balance of the Contract Price, it shall pay the Contractor the difference, and
 - 5.5.4 on expiry of the Warranty Period, charge the Contractor the amount by which the cost of corrections to his or her work under **ITEM 29 - WARRANTY** exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the Contractor the difference.
- 5.6 If a Performance Bond has been provided by the Contractor the provisions of this Contract Requirement shall be exercised in accordance with the conditions of such Performance Bond.
- 5.7 The Contractor's obligation under the Contract as to quality, correction and warranty of the work performed by him or her up to the time of termination shall continue in force after such termination.

6. CONTRACTOR'S RIGHT TO STOP THE WORK OR TERMINATE CONTRACT

- 6.1 If the Work should be stopped or otherwise delayed for a period of ninety (90) days or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the Contractor or of anyone directly or indirectly employed or engaged by him or her, the Contractor may, without prejudice to any other right or remedy he or she may have, by giving the Board written notice, terminate the Contract.
- 6.2 The Contractor may notify the Board in writing, with a copy to the Consultant, that the Board is in default of its contractual obligations if:
 - 6.2.1 the Consultant fails to issue a Certificate in accordance with the provisions of ITEM 14 - CERTIFICATES AND PAYMENT, or
 - 6.2.2 the Board fails to pay the Contractor when due the amount certified by the Consultant or awarded by arbitration or court, or

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- 6.2.3 the Board violates the requirements of the Contract to a substantial degree and the Consultant confirms by written statement to the Contractor that sufficient cause exists.
- 6.3 The Contractor's written notice to the Board shall advise that if the default is not corrected in the five (5) working days immediately following the receipt of the written notice the Contractor may, without prejudice to any other right or remedy he or she may have, stop the Work or terminate the Contract.
- 6.4 If the Contractor terminates the Contract under the conditions set out above, he or she shall be entitled to be paid for all work performed proportionate to the amount of the Contract Price, and for loss sustained upon products, construction machinery and equipment with reasonable profit, as certified by the Consultant.
- 6.5 The provisions of this Contract Requirement shall not apply to the withholding of Certificates and/or Payments because of the Contractor's failure to pay all just claims promptly or because of the registration, or notice of registration, of a lien against the Place of the Work.

7. DISPUTES

- 7.1 Differences between the parties to the Contract as to the interpretation, application or administration of this Contract or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by finding of the Consultant pursuant to the provisions of **ITEM 3 - CONSULTANT**, Paragraphs 3.6 and 3.7, shall be settled in accordance with this Contract Requirement.
- 7.2 The claimant shall give written notice of such dispute to the other party no later than thirty (30) days after the receipt of the Consultants finding given under **ITEM 3 - CONSULTANT**, Paragraph 3.7. Such notice shall set forth particulars of the matters in dispute, the probable extent and value of the damage and the relevant provisions of the Contract Documents. The other party shall reply to such notice no later than fourteen (14) days after he or she receives or is considered to have received it, setting out in such reply his or her grounds and other relevant provisions of the Contract Documents.
- 7.3 If the matter in dispute is not resolved promptly the Consultant will give such instructions as, in his or her opinion, are necessary for the proper performance of the Work and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim they may have. If it is subsequently determined that such instructions were in error or at variance with the Contract Documents, the Board shall pay the Contractor costs incurred by the Contractor in carrying out such instructions which he or she was required to do beyond what the Contract Documents correctly understood and interpreted would have required him or her to do, including costs resulting from interruption of the Work.
- 7.4 It is agreed that no act by either party shall be construed as a renunciation or waiver or any of his or her rights or recourses, provided he or she has given the notices in accordance with Paragraph 7.2 and has carried out the instructions as provided in Paragraph 7.3.
- 7.5 If the parties have agreed to submit disputes to arbitration pursuant to a Supplementary Contract Requirement, or by subsequent agreement, then the dispute shall be submitted to arbitration in accordance with the provisions of the arbitration legislation of the Place of the Work.
- 7.6 If no provision or agreement is made for arbitration then either party may submit the dispute to such judicial tribunal as the circumstances may require.
- 7.7 In recognition of the obligation by the Contractor to perform the disputed work as provided in Paragraph 7.3, it is agreed that settlement of dispute proceedings may be commenced immediately following the dispute in accordance with the foregoing settlement of dispute procedures.

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- 7.8 In the event of any claim or dispute arising out of or related to the Contract involving either the Contractor or the Board, then the Board shall have the right to withhold payment otherwise due and payable to the Contractor under the Contract, in such amounts as the Board considers necessary, including the amount of any legal and consulting fees that the Board may incur in connection with same, until such claim or dispute has been resolved to the satisfaction of the Board, and the Board shall also have the right to deduct amounts otherwise due from the Board to the Contractor under the Contract and retain same on account of all amounts, including legal and consulting fees, which the Board incurs in connection with such claim or dispute, thereby reducing the Total Contract Amount owing by the Board to the Contractor.

8. ASSIGNMENT

- 8.1 Neither party to the Contract shall assign the Contract or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

9. OTHER CONTRACTORS

- 9.1 The Board reserves the right to let separate contracts in connection with the Project of which the Work is a part, or do certain work by its own forces.
- 9.2 When separate contracts are awarded for different parts of the Project or work is performed by the Board's own forces, the Board shall:
- 9.2.1 ensure that the Contractor is informed of the scope of the work of the Board's own forces and of each separate contract, as it affects the Work of this Contract, and
 - 9.2.2 inform and instruct Other Contractors that they, while performing work on this Project are under the authority of the Contractor. All Other Contractors are to discuss with, and follow instructions from, the Contractor for all matters of site access, vehicles, deliveries, storage, temporary facilities, coordination with the work of other sub-contractors, work methods, scheduling, labour conditions, construction safety, environmental protection, security and all other matters which relate to the safe and proper execution of construction work, and
 - 9.2.3 ensure that insurance coverage is provided to the same requirements as are called for in **ITEM 24 - INSURANCE**. Such insurance shall be co-ordinated with the insurance coverage of the Contractor as it affects the Work of this Contract.
- 9.3 The Contractor shall be responsible for all persons and entities performing work on this Project including all other Contractors, at all times up to and including the date of Substantial Performance of the Work. Authority for coordination and instructions relating to all matters of site access, vehicles, deliveries, storage, temporary facilities, coordination with the work of other sub-contractors, work methods, scheduling, labour conditions, construction safety, environmental protection, security and other matters which relate to the safe and proper execution of construction work shall rest with the Contractor. Refer to **ITEM 22 - INDEMNIFICATION**, Paragraph 22.1 for the Contractor's liabilities and obligations in this regard.
- 9.4 The Contractor shall co-ordinate the Work of this Contract with the work of Other Contractors and connect as specified or indicated in the Contract Documents. If there is a change in the scope of the work required for the planning and performance of this co-ordination and connection, the changes shall be authorized in accordance with **ITEM 11 - CHANGES IN THE WORK**, and the value of the changes shall be determined in accordance with **ITEM 12 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK**.
- 9.5 The Contractor shall report to the Consultant any apparent deficiencies in Other Contractors' work which may affect the Work of this Contract immediately when they come to his or her attention and shall confirm such report in writing. Failure by the Contractor to so report shall invalidate any claims against the Board by

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reason of the deficiencies of Other Contractors' work except as to those of which he or she was not reasonably aware.

9.6 The Board shall take all reasonable precautions to avoid labour disputes or other disputes on the Project arising from the work of Other Contractors.

9.7 The Contractor shall afford Other Contractors, cooperative and reasonable opportunity for the receiving and storage of material at the Place of the work, and shall assist them in the execution of their work.

10. SUB-CONTRACTORS

10.1 The Contractor agrees to preserve and protect the rights of the parties under the Contract with respect to work to be performed under subcontract and to:

10.1.1 enter into contracts or written agreements with his or her Sub-contractors to require them to perform their work in accordance with and subject to the terms and conditions of the Contract Documents, and

10.1.2 be as fully responsible to the Board for acts and omissions of his or her Sub-contractors and of persons directly or indirectly employed by the Sub-contractors as for acts and omissions of persons directly employed by him or her.

The Contractor therefore agrees that he or she will incorporate the terms and conditions of the Contract Documents into all subcontract agreements he or she enters into with his or her Sub-contractors. Note specifically **ITEM 15 - COMPLETION SECURITY ACCOUNT**, Paragraph 15.3, which stipulates that the terms and conditions of the Completion Security Account do not apply to Sub-contractors.

10.2 The Contractor agrees to employ those Sub-contractors proposed by him or her in writing and accepted by the Board at the signing of the Contract.

10.3 The Board may, for reasonable cause, object to the use of a proposed Sub-contractor and require the Contractor to employ one of the other subcontract bidders.

10.4 In the event that the Board requires a change from a proposed Sub-contractor the Contract Price shall be adjusted by the difference in cost.

10.5 The Contractor shall not be required to employ as a Sub-contractor a person or entity to whom he or she may reasonably object.

10.6 The Consultant may, upon reasonable request and at his or her discretion, provide to a Sub-contractor information as to the percentage or quantity of the Sub-contractor's work which has been certified for payment.

10.7 Nothing contained in the Contract Documents shall create a contractual relationship between a Sub-contractor and the Board.

10.8 The Specification has been divided into sections, according to trades or types or work, for the purpose of ready reference. This does not limit the Contractor's liability nor establish the ultimate limits of various work to be performed. The responsibility as to which sub-trade provides required articles or materials to be built-in or provided, or otherwise complete the required work, rests solely with the Contractor. Extras shall not be considered based upon grounds of differences in interpretation of Specifications as to which trade involved shall provide certain specialties or materials or shall do the required work. The Contractor must therefore read all of the Specifications, in order to produce a complete, functional project.

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11. CHANGES IN THE WORK

- 11.1 Except as provided in **ITEM 12 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK**, Paragraph 12.4, the following shall apply:
- 11.1.1 the Board, through the Consultant, without invalidating the Contract, may make Changes in the Work with the Contingency Allowance balance and Contract Time being adjusted accordingly by written order, and
 - 11.1.2 no Changes in the Work shall proceed without a written order signed by the Board and no claim against the Contingency Allowance or no claim for a change in the Contract Time shall be valid unless so ordered and at the same time valued or agreed to be valued as provided in **Item 12 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK**, and
 - 11.1.3 upon Completion of the Contract, the Consultant shall review the balance of monies in both the Contingency Allowance and the Cash Allowances. The Contract Price shall be adjusted accordingly, and only once, upon Completion of the Contract.
- 11.2 Sum total of Change Orders shall not affect the status of the Contract, and the Contractor shall not claim for delay on the basis of sum total of Change Orders. Refer to **ITEM 12 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK**, Paragraph 12.2 which requires that a change in Contract Time be specified, if required, only at the time of issuance of Change Order.

12. VALUATION AND CERTIFICATION OF CHANGES IN THE WORK

- 12.1 The value of a change shall be determined in one or more of the following methods:
- 12.1.1 by estimate and acceptance in a lump sum;
 - 12.1.2 by unit prices set out in the Contract or subsequently agreed upon;
 - 12.1.3 by cost and a fixed or percentage fee.
- 12.2 When a change in the Work is proposed or required, the Contractor shall present to the Consultant for approval, his or her claim for a change to the Contingency Allowance balance and his or her claim for a change in Contract Time with appropriate documentation in a form acceptable to the Consultant. The Consultant shall satisfy himself or herself as to the correctness of such claim and when approved by the Board, a Change Order shall be issued to the Contractor amending the balance in the Contingency Allowance and Contract Time as appropriate. (Note, however that the Contract Price is not amended by each or any amendment to the balance in the Contingency Allowance. Refer to Sub-Paragraph 11.1.3 above.) The value of work performed in the change shall be included for payment with regular Certificates for Payment. The claim shall include a complete breakdown of the costs by trade with backup documentation in sufficient detail as required by the Consultant, to enable an accurate check to be made on the amount of monies involved.
- 12.3 Cost breakdown data as required by the Consultant shall be consistent with the following:
- 12.3.1 The Contractor shall prepare and present to the Consultant a detailed estimate of his or her and his or her Subcontractors' costs, including labour and materials, overheads and fees, showing each separately. In the estimate labour shall be shown in man-hours on an itemized basis. Labour costs shall include all direct wage costs and direct labour supervision, plus all associated traveling costs and Supplementary Wage Burdens as required by Collective Agreements, and all associated Statutory Charges.
 - 12.3.2 Supplementary Wage Burdens and Statutory Charges as referred to above, are defined as follows:

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- Supplementary Wage Burdens are defined in individual union contracts and include but are not necessarily limited to vacation pay, welfare, pension, dues, supplements, apprenticeship training and employer contributions.
 - Statutory Charges shall include but are not necessarily limited to Workers' Compensation payments, Canada Pension Plan, and Unemployment Insurance Contributions.
 - In the case of changes in the Work to be paid for by Method 12.1.1 of Paragraph 12.1, the Contractor's overhead and fee shall be calculated on the net positive difference only for similar work, after all credits included in the request for quotation have been deducted.
- 12.4 In the case of changes in the Work to be paid for under Methods 12.1.2 and .3 of Paragraph 12.1, the form of presentation of costs and methods of measurement shall be agreed to by the Consultant and Contractor before proceeding with the change. The Contractor shall keep accurate records, as agreed upon, of quantities or costs and present an account of the cost of the change in the Work, together with vouchers where applicable. Unit prices shall apply to the net change in quantities of each type of unit, in any particular notice of change.
- 12.5 If the method of valuation, measurement, change to the Contingency Allowance balance and change in Contract Time cannot be promptly agreed upon and the change is required to be proceeded with, then the Consultant in the first instance will establish the method of valuation, measurement, the change in the Contingency Allowance balance and Contract Time, subject to his or her finding the manner set out in **ITEM 7**
-DISPUTES. In this case, the Consultant shall, with the consent of the Board, issue a written authorization for the change, setting out the method of valuation and if by lump sum, his or her valuation of the change in the balance of the Contingency Allowance and Contract Time.
- 12.6 In the case of a dispute in the valuation of a change authorized in the Work and pending final determination of such value, the Consultant will certify the value for work performed in accordance with his or her own evaluation of the change and include the amount with the regular Certificates for Payment. The Contractor shall keep accurate records of quantities and cost of such work.
- 12.7 It is intended in all matters referred to above that both the Consultant and Contractor shall act promptly.
- 12.8 In the valuation of labour costs in connection with changes, the amount to be charged for labour burden shall be limited to such amounts as can be directly substantiated by statute or current labour agreement.
- 12.9 In the valuation of material costs in connection with changes, the amount to be charged shall be the actual material cost.
- 12.10 In the valuation of changes in Work, in accordance with Method 12.1.3 of Paragraph 12.1, the mark-ups shall be limited to
- 12.10.1 10 % extra for overhead
5% extra for profit
within the scope of the Contractor's own work or Sub-contractor's own work.
 - 12.10.2 5% Extra by the Contractor and Sub-contractors on the work of their Sub-contractors.
- 12.11 Valuation for overhead and profit shall cover all of the Contractor's and/or Sub-contractor's administrative and incidental costs relating to changes, including but not limited to supervision,, shop drawing production, office expenses, workmen's tools, temporary facilities and controls.
- 12.12 Contractor and Sub-contractor shall not be entitled to a fee or charge for overhead and/or profit on credits to the Contract. Where a charge involved extras and credits on the work of a trade, the allowance for overhead and profit shall only apply to the net extra.

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13. APPLICATIONS FOR PAYMENT

- 13.1 Applications for payment of account as provided in **ARTICLE 5 of the AGREEMENT-PAYMENT**, shall be made monthly as the Work progresses.
- 13.2 Application for payment shall be dated the last day of the monthly payment period and the amount claimed shall be for the value, proportionate to the amount of the Contract Price, of the Work performed. Approval for payment on all applications shall only be granted for those items incorporated into the actual construction of the Project, except as hereinafter modified. The Contractor shall also submit with his or her application a Proper Invoice, and receipts, vouchers, showing payment for any materials, purchased for the Work under Conditional Sales Agreement and for any other liability, for which he or she is responsible and which, if not paid, might fall upon the Board, and the Consultant shall not take into account when issuing a certificate any amount for which a receipt or other voucher is required as aforesaid unless the same is furnished to him or her.
- 13.3 The Contractor shall submit to the Consultant, at least fourteen (14) days before the first application for payment, a schedule of values of the various parts of the Work, aggregating the total amount of the Contract Price and divided so as to facilitate evaluation of Applications for Payment. The schedule shall be itemized, listing the actual subcontract price so that the amount certified on interim certificates shall be in conformity with the contract amount to be shown on the certificate for release of the Sub-contractor's holdback.
- The Contractor shall show any markup or value of the Work done by his or her own forces in connection with the subcontract, separate from the subcontract price.
- 13.4 This schedule shall be made out in such form and supported by such evidence as to its correctness as the Consultant may reasonably direct and when approved by the Consultant shall be used as the basis for applications for payment, unless it is found to be in error.
- 13.5 When making applications for payment, the Contractor shall submit a statement based upon this schedule. Requests for payment for products prior to their incorporation into the actual construction when accompanied by an invoice identified as "Paid in Full" from the manufacturer and/or supplier of said product will be considered on an individual basis where the prior payment for such products shall, in the opinion of the Consultant:
- 13.5.1 ensure maintenance of the construction schedule and/or
 - 13.5.2 ensure materials in short supply shall be available when required and/or
 - 13.5.3 ensure that the Contractor and/or Sub-contractors shall not be burdened with increasing costs for products due to escalation of costs, and/or
 - 13.5.4 be advantageous to the Board.
- Requests for payment of such products, shall be supported by such evidence as the Consultant may reasonably require to establish the value and delivering of the products.
- Products receiving "prior payment" shall be stored in such place and manner as approved by the Board, so as to be immediately available to the Place of the Work as required.
- The Contractor shall be responsible for storage, security, and timely delivery of products to the Place of the Work as well as any and all such additional costs resulting therefrom.
- 13.6 Applications for release of holdback monies following Substantial Performance of the Work and the application for final payment shall be made at the time and in the manner set forth in **ITEM 14 -**

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CERTIFICATES AND PAYMENTS. The Contractor shall submit with the application for the Release of Holdback, the following documents:

- 13.6.1 All specified written guarantees, bonds, records, affidavits, certificates and statements, and
 - 13.6.2 A Statutory Declaration stating that all accounts in connection with the Contract have been paid in full, and
 - 13.6.3 A statement from the Workers' Compensation Board that all assessments have been paid in full at the end of the Project, and
 - 13.6.4 A copy of Certificate of Substantial Performance, as published in construction trade newspaper.
- 13.7 The Contractor shall submit with each subsequent application for payment after the first, a Statutory Declaration in form satisfactory to the Consultant, verifying that all payments due to Sub-contractors for wages and salaries, for work done and products furnished, in connection with the Work, to the end of the month immediately preceding that covered by the current application, have been made.

14. CERTIFICATES AND PAYMENTS

- 14.1 The Consultant will, no later than seven (7) days after the receipt of an application for payment from the Contractor submitted in accordance with **ITEM 13 - APPLICATIONS FOR PAYMENT**, issue a Certificate for Payment in the amount applied for or in such other amount as he or she determines to be properly due. If the Consultant amends the application, he or she will promptly notify the Contractor in writing giving his or her reasons for the amendment.
- 14.2 The Board shall within twenty-one (21) days of the receipt of a Certificate for Payment issued by the Consultant, make payment to the Contractor on account in accordance with the provisions of **Article 5 of the AGREEMENT - PAYMENT**, unless, within seven (7) days of the receipt of the Certificate for Payment issued by the Consultant it provides notice to the Contractor in the prescribed form that it refuses to pay all or a portion of the amount requested in the application for payment.
- 14.3 When the Contractor considers that the Work is substantially performed, or if permitted by the lien legislation applicable to the Place of the Work, a designated portion thereof which the Board agrees to accept separately is substantially performed, the Contractor shall prepare and submit to the Consultant a comprehensive list of items to be completed or corrected and apply for a review by the Consultant to establish Substantial Performance of the Work or substantial performance of the designated portion of the Work. Where a portion of the Work is ready for use or is being used for the purposes intended and the Board and the Contractor agree not to complete the Work expeditiously, the price of the services or materials remaining to be supplied and required to complete the Work shall be deducted from the Contract Price in determining Substantial Performance. Failure to include an item on the list does not alter the responsibility of the Contractor to complete the Contract.
- 14.4 The Consultant will, no later than seven (7) days after the receipt of an application from Contractor for a Certificate of Substantial Performance of the Work, carry out a review and assessment of the Work to verify the validity of the application. The Consultant will, no later than five (5) days after his or her review of the work, notify the Contractor of his or her approval or the reasons for his or her disapproval of the application. When the Consultant finds that Substantial Performance of the Work has been reached the Consultant will issue such a Certificate. The date of Substantial Performance of the Work shall be as stated in this Certificate. Immediately following the issuance of the Certificate of Substantial Performance of the Work containing the information required by the applicable lien legislation, the Contractor, in consultation with the Consultant, will establish the date for the Completion of the Contract, in accordance with the provisions of **ITEM 15 - COMPLETION SECURITY ACCOUNT**.
- 14.5 Immediately following the issuance of the Certificate of Substantial Performance of the Work the Consultant will issue a Certificate for Payment of Holdback Monies. The holdback monies authorized by this Certificate shall become due and payable on the day following the expiry of the statutory limitation period stipulated in the lien legislation applicable to the Place of the Work or where such legislation does

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- not exist or apply in accordance with such other legislation, industry practice or such other provisions which may be agreed to between the parties, providing that the Board may retain out of such holdback monies any sum required by law to satisfy any liens against the Work or other monetary claims against the Contractor and enforceable against the Board and that the Contractor has submitted to the Board a sworn statement that all accounts for labour, subcontracts, products, construction machinery and equipment and other indebtedness which may have been incurred by the Contractor in the Substantial Performance of the Work and for which the Board might in any way be held responsible have been paid in full except holdback monies properly retained.
- 14.6 Where legislation permits and where, upon application by the Contractor, the Consultant has certified that the work of a Sub-contractor has been totally performed to his or her satisfaction prior to the Substantial Performance of the Work, the Board shall pay the Contractor the holdback retained for such Sub-contractor on the day following the expiry of the statutory limitation period for such Sub-contractor stipulated in the lien legislation applicable to the Place of Work. Refer to **ITEM 16 - EARLY RELEASE OF CONSTRUCTION LIEN HOLDBACK** for additional details.
- 14.7 Notwithstanding the provisions of Paragraph 14.6 and the wording of such Certificates the Contractor shall ensure that such work is protected pending the issuance of the Final Certificate for Payment and be responsible for the correction of defects in it regardless of whether or not they were apparent when such Certificates were issued.
- 14.8 The Consultant will, no later than seven (7) days after the receipt of an application from the Contractor for payment upon Completion of the Contract, carry out a review and assessment of the Work to verify the validity of the application. The Consultant will, no later than five (5) days after his or her review of the work, notify the Contractor of his or her approval or the reasons for his or her disapproval of the application. When the Consultant finds that Completion of the Contract has been reached he or she will issue a statement of Completion of the Contract and certify for payment the remaining monies due to the Contractor under the Contract less holdback monies which are required to be retained. The date of Completion of the Contract shall be as stated in this Certificate. Subject to the provisions of **ITEM 21 - WORKERS' COMPENSATION INSURANCE** Paragraph 21.1, the Board shall, within seven (7) days of the receipt of such Certificate, make payment to the Contractor in accordance with the provisions of **ARTICLE A of the AGREEMENT** and **ITEM 15- COMPLETION SECURITY ACCOUNT**.
- 14.9 When it has been mutually agreed between the Consultant and the Contractor that all work has been satisfactorily completed, the Contractor shall issue a written statement to the Board to the effect that "all work with respect to the Contract has been completed as of the date of the statement and no further work is required except for repairs or replacements as set out in the guarantee clauses of the Specifications."
- 14.10 Prior to Final Release of Holdback the Contractor shall submit to the Consultant:
- 14.10.1 An acceptable Statutory Declaration signed by the Contractor stating that all material, work and services, in connection with the Contract have been paid in full except for Statutory Holdbacks, and that no liens exist, and
- 14.10.2 A receipt from each Sub-contractor stating that the Sub-contractor has, except for Statutory Holdbacks, been paid in full for all materials, work and services in connection with this Contract, and
- 14.10.3 A statement from the Workers' Compensation Board to the effect that all assessments from the Workers' Compensation Board to the end of the Project have been paid in full.
- 14.11 The release of remaining holdback monies shall become due and payable on the day following the expiry of the statutory limitation period stipulated in the lien legislation applicable to the Place of the Work, or where such legislation does not exist or apply in accordance with such other legislation, industry practice or such other provisions which may be agreed to between the parties, providing that the Board may retain out of such holdback monies any sums required by law to satisfy any liens against the Work or other monetary claims against the Contractor and enforceable against the Board and that the Contractor has

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- submitted to the Board a sworn statement that all accounts for labour, subcontracts, products, construction machinery and equipment and other indebtedness which may have been incurred by the Contractor in the Performance of the Work and for which the Board might in any way be held responsible have been paid in full except holdback monies properly retained.
- 14.12 If because of climatic or other conditions reasonably beyond the control of the Contractor there are items of work that cannot be performed, payment in full for work which has been performed as certified by the Consultant shall not be withheld or delayed by the Board on account thereof, but the Board may withhold until the remaining work is finished only such monies as the Consultant determines are sufficient and reasonable to cover the cost of performing such remaining work and to adequately protect the Board from claims.
- 14.13 No payment made by the Board under this contract or partial or entire use or occupancy of the Work by the Board shall constitute an acceptance of work or products which are not in accordance with the requirements of the Contract Documents.
- 14.14 All Certificates issued by the Consultant shall be to the best of his or her knowledge, information and belief. By issuing any Certificate the Consultant does not guarantee the correctness or completeness of the Work.
- 14.15 Prior to issuance of the Final Certificate of Payment, the following must be provided:
- 14.15.1 the required guarantees and warranties, as documented in the technical sections of the Specifications must be received, reviewed and accepted by the Consultant and the Board, and
 - 14.15.2 manufacturers' guarantees covering rated output, efficiency and performance for all operating equipment forming part of the Work must be received by the Consultant and the Board, and
 - 14.15.3 operating and maintenance instructions for equipment and apparatus furnished under the Contract and all As-Built Drawings as required by the Specifications forming part of the Work must be received, reviewed and accepted by the Consultant and the Board, and
 - 14.15.4 the completion of all Work, including, without limitation, patching and the furnishing of missing material, products and items, correction of all known defects and deficiencies as documented by the Consultant and the Board, and acceptance thereof by the Board, and
 - 14.15.5 the Board must receive:
 - 14.15.5.1 in addition to the Contractor's As-Built Drawings, all records and related data, as required by the Contract Documents, and
 - 14.15.5.2 all permits, licenses, approvals, certificates and authorization required by any authority having jurisdiction over the Project or the Place of Work, and
 - 14.15.5.3 proof that all claims, including taxes, arising from or in respect of the Work and any liens arising from the same which shall have been claimed, filed or recorded have been finally and conclusively satisfied and released; all of which shall be in the form and substance satisfactory to the Board, and
 - 14.15.6 the Consultant must receive a satisfactory Certificate from the Contractor addressed to the Board certifying that the Work has been completed in accordance with the Contract Documents.
- 14.16 As of the date of the Final Certificate for Payment the Board expressly waives and releases the Contractor from all claims against the Contractor including without limitation those that might arise from the negligence or breach of contract by the Contractor except one or more of the following:
- 14.16.1 those made in writing prior to the date of the Final Certificate for Payment and still unsettled;

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- 14.16.2 those arising from the provisions of **ITEM 22 - INDEMNIFICATION** or **ITEM 29-WARRANTY**;
- 14.16.3 those made in writing within a period of six (6) years from the date of Substantial Performance of the Work, as set out in the Certificate of Substantial Performance of the Work, or within such shorter period as may be prescribed by any limitation statute of the Province of Ontario and arising from any liability of the Contractor for damages resulting from his or her performance of the Contract with respect to substantial defects or deficiencies in the Work for which the Contractor is proven responsible. As used herein "substantial defects or deficiencies" means those defects or deficiencies in the Work which affect the Work to such an extent or in such a manner that a significant part or the whole of the Work is unfit for the purpose intended by the Contract Documents.
- 14.17 As of the date of the Final Certificate for Payment, the Contractor expressly waives and releases the Board from all claims against the Board including without limitation those that might arise from the negligence or breach of contract by the Board except those made in writing prior to the Contractor's final application for payment and still unsettled.
- 14.18 Notwithstanding **ITEM 1 – CONTRACT DOCUMENTS**, Paragraph 1.6, in the event of conflict between the provisions of this Contract Requirement and **ARTICLE 6 of the AGREEMENT - RIGHTS AND REMEDIES**, Paragraph (a) or **ITEM 26 - DAMAGES AND MUTUAL RESPONSIBILITY**, the provisions of this Contract Requirement shall govern.

15. COMPLETION SECURITY ACCOUNT

- 15.1 The Contract Price includes the Completion Security Account stated in the Contract Documents.
- 15.2 The Completion Security Account consists of a fixed amount of the Contractor's approved monthly (or any other) invoices, after construction lien holdback amount has been deducted.
- 15.3 The terms and conditions of the Completion Security Account apply only to the Contractor, and shall not be applied by the Contractor to his or her Sub-contractors' contracts or similarly, any other entities' contracts or written agreements with the Contractor, with respect to the performance of the Work of this Contract.
- 15.4 The total accumulated amount in the Completion Security Account shall be released to the Contractor upon Completion of the Contract. No partial releases from the Completion Security Account will be considered.
- 15.5 A meeting shall take place at the time of Substantial Performance of the Work with the Contractor, the Board and Consultant being in attendance. The meeting shall establish the date of intended 100% Completion of the Work. This date will be monitored by all parties and the financial provisions of the Completion Security Account will be applied in accordance with this date.
- 15.6 At the date of intended 100% Completion, if any work remains uncompleted, and the Contractor's schedule for the completion of the outstanding work is unacceptable to the Board, then the Board shall in writing terminate the Contractor's right to continue with the outstanding work and hire other forces to execute the work to 100% Completion. The cost of such work shall be deducted from the Completion Security Account.
- 15.7 An administration cost may be assigned by the Board, and deducted from the Completion Security Account as it sees fit, to compensate for its coordination of the additional work entailed in Paragraph 15.5 above.
- 15.8 Upon issuance of the Final Certificate of Payment, the balance of the monies in the Completion Security Account shall become due and payable. Subject to the provisions of **ITEM 21 - WORKERS' COMPENSATION INSURANCE**, Paragraph 21.1, the Board shall, no later than seven (7) days after

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the issuance of Certificate, make payment to the Contractor in accordance with the provisions of **ARTICLE 5 of the AGREEMENT - PAYMENT**.

15.9 The Completion Security Account consists of a fixed amount, determined by the Contract Price, as follows:

| CONTRACT PRICE | BASE AMOUNT | FIXED % ON BALANCE | | TO MAXIMUM |
|------------------------------------|-------------|--------------------|------|--------------|
| from 0 to \$50,000. | - | + | 10% | = \$5,000. |
| from \$50,001. to \$100,000. | \$5,000. | + | 8% | = \$9,000. |
| from \$100,001. to \$250,000. | \$9,000. | + | 6% | = \$18,000. |
| from \$250,001. to \$500,000. | \$18,000. | + | 4% | = \$28,000. |
| from \$500,001. to \$1,000,000. | \$28,000. | + | 2% | = \$38,000. |
| from \$1,000,001. to \$5,000,000. | \$38,000. | + | 1% | = \$78,000. |
| from \$5,000,001. to \$15,000,000. | \$78,000. | + | 0.3% | = \$108,000. |
| from \$15,000,001. | \$108,000. | + | 0.1% | |

15.10 No interest payments or other escalator charges shall be added to the Completion Security Account, as it accumulates during the life of the Contract. The total value of the Account, due and payable upon issuance of the Final Certificate of Payment, shall be equal to the amount as calculated in Paragraph 15.9 above.

15.11 None of the provisions of this Contract Requirement shall take precedence over **ITEM 5 - BOARD'S RIGHT TO PERFORM WORK OR STOP THE WORK OR TERMINATE CONTRACT**, unless the Certificate of Substantial Performance of the Work has been issued, in which case the provisions of this Contract Requirement shall govern.

16. EARLY RELEASE OF CONSTRUCTION LIEN HOLDBACK

16.1 Requests for early release of Lien Holdback monies to certain Sub-contractors may be approved when the construction period is likely to be of very long duration. Where the work of a Subcontract to the Contract has been certified 100% complete by the Consultant prior to the Completion of the Contract, the Contractor may make application for the release of that portion of the Statutory Holdback which applied to the actual value of that Subcontract.

16.2 Note that the amount in the Completion Security Account is not affected by the early release of the Construction Lien Holdback. Refer to Paragraphs 15.2 to 15.4 of **ITEM 15 - COMPLETION SECURITY ACCOUNT** for applicable details.

16.3 The Contractor when applying for release of holdback on a subcontract shall provide to the Board through the Consultant:

16.3.1 A statement of the actual amount of the Subcontract.

16.3.2 Declaration of last supply (as per Construction Lien Act).

16.3.3 A Statutory Declaration from the Sub-contractor confirming that all accounts have been paid.

16.3.4 A Guarantee for materials and labour from the Sub-contractor to the Contractor.

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- 16.3.5 A letter of good standing from the Workers' Compensation Board on behalf of the Sub-contractor.
- 16.3.6 A letter from the Contractor acknowledging that the work of the Subcontract is 100% Complete, and confirming the full acceptance of responsibility for that work. Upon receipt of the above the Consultant will issue to the Board, the Contractor and that Sub-contractor a "Certificate of Subcontract Completion" advising the Board that the amount of the Statutory Holdback may be reduced by the amount of the Holdback that is directly applicable to the Subcontract, following the expiry of all lien rights due the Sub-contractor and providing that the Board is satisfied that no liens on the property can or do exist.

17. STATUTORY DECLARATION

- 17.1 The form of all Statutory Declaration Documents shall be in accordance with the latest edition of the CCDC - approved Statutory Declaration Document, modified as may be necessary to incorporate the Board's Contract Requirements.

18. TAXES AND DUTIES

- 18.1 Unless otherwise stated in the Supplementary Contract Requirements the Contractor shall pay all applicable federal and provincial sales tax, including the Harmonized Sales Tax (H.S.T.), customs duties, excise taxes and any other value-added taxes that apply to the Contract.
- 18.2 The Contractor shall provide a detailed breakdown of all taxes paid by the Contractor, with similar breakdown by Sub-contractors, in such form as the Board may require for the purpose of applying for tax rebates or refunds. When such application must be made by the Contractor or Sub-contractor, the Contractor and Sub-contractor shall cooperate fully with the Board in the expeditious preparation of rebate claims in accordance with guidelines established by the Board.
- 18.3 The Board or the Board's Tax Advisor shall have unlimited access to Contractor's and Sub-contractors' invoices to reproduce all documentation relating to material purchases for the construction of the building for purposes of tax recovery. The cost of reproduction shall be borne by the Board or the Board's Tax Advisors.
- 18.4 Any increase or decrease in costs to the Contractor due to changes in such taxes and duties after the date of the Tender shall increase or decrease the Contract Price accordingly. No markups on such increases or decreases in taxes and duties shall be allowed.
- 18.5 Any amount included in the Contract for tax or duty, whether or not paid, which is found to be inapplicable or for which a refund is obtained shall become the sole and exclusive property of the Board.
- 18.6 Any increase or decrease to the HST or other applicable taxes which will be enacted after, but was publicly announced prior to the date of the Tender, shall not change the Contract Price. All Tenders shall take into account any and all such notices of tax revisions, when submitting their Tenders.

19. LAWS, NOTICES, PERMITS AND FEES

- 19.1 The laws of the Place of the Work shall govern the Work.
- 19.2 Unless noted in the Instructions to Bidders, the Board shall obtain and shall pay for the Building Permit, permanent easements and rights of servitude. The Contractor shall be responsible for all other permits, licenses or certificates necessary for the performance of the Work which are in force at the date of Tender Closing.
- 19.3 The Contractor shall give the required notices and comply with the laws, ordinances, rules, regulations, codes and orders of the Authorities having Jurisdiction which are or become in force during the

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performance of the Work and which relate to the Work, to the preservation of the public health, and to construction safety.

- 19.4 The Contractor shall not be responsible for verifying that the Contract Documents are in compliance with the applicable laws, ordinances, rules, regulations and codes relating to the Work. If the Contract Documents are at variance therewith, or changes which require modification to the Contract Documents are made to the laws, ordinances, rules, regulations and codes by the Authorities having Jurisdiction subsequent to the date of Tender Closing, the Contractor shall notify the Consultant in writing requesting direction immediately upon such variance or change becoming known to him or her. The Consultant shall make the changes required to the Contract Documents in accordance with **ITEM 11 - CHANGES IN THE WORK**, and the value of the changes shall be determined in accordance with **ITEM 12 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK**.
- 19.5 If the Contractor fails to notify the Consultant in writing and obtain his or her direction as required in Paragraph 19.4 and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, codes and orders of the Authorities having Jurisdiction, the Contractor shall be responsible for and shall correct the violations thereof and shall bear the costs, expense and damages attributable to his or her failure to comply with the provisions of such laws ordinances, rules, regulations, codes and orders.
- 19.6 The Contractor shall secure all Certificates of Inspection and Occupancy that may be required by the Authorities having Jurisdiction over the Work. He or she shall deliver same to the Consultant upon completion of the Work.

20. PATENT FEES

- 20.1 The Contractor shall pay the royalties and patent license fees required for the performance of the Contract. He or she shall hold the Board harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention by the Contractor or anyone for whose acts he or she may be liable.
- 20.2 The Board shall hold the Contractor harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the Contractor's performance of the Contract which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the Contract, the model, plan or design of which was provided to the Contractor as part of the Contract Documents.

21. WORKERS' COMPENSATION INSURANCE

- 21.1 Prior to commencing the Work and prior to receiving payment at dates of Substantial Performance of the Work, Completion of the Contract and issuance of the Final Certificate for Payment, the Contractor shall provide evidence of compliance with the requirements of the Place of the Work with respect to Workers' Compensation Insurance including payments due thereunder.
- 21.2 At any time during the term of the Contract, when requested by the Board, the Contractor shall provide such evidence of compliance by himself or herself and his or her Sub-contractors.

22. INDEMNIFICATION

- 22.1 The Contractor shall indemnify and hold harmless the Board and the Consultant, their respective agents and employees from and against claims, demands, losses, costs, damages, actions, suits or proceedings by third parties that arise out of, or are attributable to, the Contractor's performance of the Contract (hereinafter called "claims"), provided such claims are:

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- 22.1.1 attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and
- 22.1.2 caused by negligent acts or omissions of the Contractor or anyone for whose acts he or she may be liable, and
- 22.1.3 made in writing within a period of six (6) years from the date of Substantial Performance of the Work as set out in the Certificate of Substantial Performance of the Work, or within such shorter period as may be prescribed by any limitation statute of the Province of Ontario.

The Board expressly waives the right to indemnity for claims other than those stated above.

- 22.2 The obligation of the Contractor to indemnify thereunder shall be limited to five million dollars (\$5,000,000.00) per occurrence from the commencement of the Work until Substantial Performance of the Work and thereafter to an aggregate limit of five million dollars (\$5,000,000.)
- 22.3 The Board shall indemnify and hold harmless the Contractor, his or her agents and employees from and against claims, demands, losses, costs, damages, actions suits, or proceedings arising out of the Contractor's performance of the Contract which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the Place of the Work.
- 22.4 Notwithstanding **ITEM 1 –CONTRACT DOCUMENTS**, Paragraph 1.6, in the event of conflict between the provisions of this Contract Requirement and **ARTICLE 6 of the AGREEMENT - RIGHTS AND REMEDIES**, Paragraph (6.1) or **ITEM 26 - DAMAGES AND MUTUAL RESPONSIBILITY**, the provisions of this Contract Requirement shall govern.

23. HEALTH & SAFETY

- 23.1 If applicable the Contractor must state under which Regulation of the Occupational Health & Safety Act, Construction or Industrial, the Contract will be performed. The Contractor will append a written outline, detailing how the Work will be performed in accordance with the applicable Regulation.
- 23.2 The Contractor shall obtain from all sub- contractors contracted to Work on this Project written assurances that all employees to be engaged in this Work have received appropriate instruction and training in the performance of the Work to comply with the Regulation under the Occupational Health & Safety Act. Copies of such written assurances must be kept in a Health & Safety file on the job site for periodic inspection by Board or Architect.
- 23.3 The Contractor covenants and agrees to comply with all statutory and other legal requirements and obligations including without limitation, the provisions of the Occupational Health and Safety Act (Ontario) and all Regulations thereto and all amending and successor legislation including without limitation Bill 208 (the "Act"), in connection with all work performed by either the Contractor, Sub-contractors, or any Other Contractor on or in connection with the Project. Without limiting the foregoing, for the purposes of this Contract, the Contractor agrees that it shall be the "Constructor" of the Project within the meaning of the Act, and as such shall assume all the obligations and responsibilities, and observe all construction safety requirements and procedures, and duties of inspection imposed by the Act on the "Constructor", as therein defined, for all work and services performed by the Contractor, Sub-contractors and Other Contractors on or in connection with the Project. The Contractor further covenants and agrees that the Board and its existing and former officers, trustees, employees and agents, and their respective heirs, executors, administrators, successors and assigns (hereinafter collectively referred to as the "Board") shall be released from any obligations or liabilities otherwise imposed on the Board, or on any of them, pursuant to the Act in connection with the Project, and that the Contractor shall assume all liability and responsibility in connection with same.

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- 23.4 The Contractor agrees to save harmless and indemnify the Board from any losses, damages, costs and expenses of any kind or nature whatsoever, including all legal expenses, and all defense costs and related expert or consulting fees, incurred by the Board, or any of them, arising in connection with the failure, default, or inability of the Contractor or the Board, or any of them, to comply with any of the aforementioned statutory or other legal requirements, or arising in connection with any breach by the Contractor of any of its covenants, agreements and obligations under this Contract.
- 23.5 The Contractor shall submit material and safety data sheets prior to commencing installation and application of at least the following:
- | | |
|---------------------|----------------------|
| lead free solder | resilient flooring |
| sealants & caulking | painting & finishing |
- 23.6 The Contractor shall submit any other products which may give off air borne particles after installation, such as;
- fertilizers
 - pesticides
 - herbicides
- 23.7 An affidavit will be submitted relative to the use of lead free solder, and the use of transite pipe.
- 23.8 The Contractor must ensure that submissions are made to allow sufficient time for the review without delaying progress of scheduled completion.

24. INSURANCE

Without restricting the generality of **ITEM 22 - INDEMNIFICATION**, the Contractor shall provide, maintain and pay for the insurance coverage specified in this Contract Requirement. Unless otherwise stipulated, the duration of each insurance policy shall be from the date of commencement of the Work until the date of the Final Certificate for Payment. Prior to commencement of the Work and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the Contractor shall promptly provide the Board with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements.

24.1 General Liability Insurance:

- 24.1.1 General liability insurance shall be in the joint names of the Contractor, the Board and the Consultant with limits of not less than five million dollars (\$5,000,000.) per occurrence and with property damage deductible not exceeding two thousand five hundred dollars (\$2,500.) The insurance coverage shall not be less than the insurance required by IBC Form 2100, or its equivalent replacement, provided that IBC Form 2100 shall contain the latest edition of the relevant CCDC endorsement form. To achieve the desired limit, umbrella, or excess liability insurance may be used. All liability coverage shall be maintained for completed operations hazards from the date of Substantial Performance of the Work, as set out in the Certificate of Substantial Performance of the Work, on an ongoing basis for a period of six (6) years following Substantial Performance of the Work. Where the Contractor maintains a single, blanket policy, the addition of the Board and the Consultant is limited to liability arising out of the Project and all operations necessary or incidental thereto. The policy shall be endorsed to provide the Board with not less than thirty (30) days notice in writing in advance of any cancellation, and of change or amendment restricting coverage.

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24.2 Automobile Liability Insurance:

- 24.2.1 Automobile liability insurance with respect to licensed vehicles shall have limits of not less than five million dollars (\$5,000,000.) inclusive per occurrence for bodily injury, death, and damage to property, covering all licensed vehicles owned or leased by the Contractor, and endorsed to provide the Board with not less than fifteen (15) days' notice in writing in advance of any cancellation, change or amendment restricting coverage. Where the policy has been issued pursuant to a government-operated automobile insurance system, the Contractor shall provide the Board with confirmation of automobile insurance coverage for all automobiles registered in the name of the Contractor.
- 24.2.2 Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft if used directly or indirectly in the performance of the Work, including use of additional premises, shall be subject to limits of not less than five million dollars (\$5,000,000.) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than five million dollars (\$5,000,000.) for aircraft passenger hazard. Such insurance shall be in a form acceptable to the Board. The policies shall be endorsed to provide the Board with not less than fifteen (15) days' notice in writing in advance of cancellation, change, or amendment restricting coverage.

24.3 Property and Boiler Insurance:

- 24.3.1 "All risks" property insurance shall be in the joint names of the Contractor, the Board and the Consultant, insuring not less than the sum of the amount of the Contract Price and the full value, as stated in the Supplementary Contract Requirements, of Products that are specified to be provided by the Board for incorporation into the Work, with a deductible not exceeding two thousand five hundred dollars (\$2,500.) The insurance coverage shall not be less than the insurance required by IBC Form 4042 or its equivalent replacement, provided that IBC Form 4042 shall contain the latest edition of the relevant CCDC endorsement form. The coverage shall be maintained continuously until ten (10) days after the date of the Final Certificate for Payment.
- 24.3.2 Boiler and machinery insurance shall be in the joint names of the Contractor, the Board and the Consultant for not less than the replacement value of boilers, pressure vessels, and other insurable objects forming part of the Work. The insurance provided shall not be less than the insurance provided by the "Comprehensive Boiler and Machinery Form" and shall be maintained continuously from commencement of use or operation of the property insured and until ten (10) days after the date of the final certificate for payment.
- 24.3.3 The policies shall allow for partial or total use or occupancy of the Work. Should the Board wish to use or occupy part or all of the Work it shall give thirty (30) days written notice to the Contractor of the intended purpose and extent of such use or occupancy. If because of such use or occupancy the Contractor is unable to provide coverage, the Contractor shall notify the Board in writing. Prior to such use or occupancy the Board shall provide, maintain, and pay for property and boiler insurance insuring the full value of the Work, as in 24.3.1 and 24.3.2, including coverage for such use or occupancy and shall provide the Contractor with proof of such insurance. The Contractor shall refund to the Board the unearned premiums applicable to the Contractor's policies upon termination of coverage.
- 24.3.4 The policies shall provide that, in the case of a loss or damage, payment shall be made to the Board and the Contractor as their respective interests may appear. The Contractor shall act on behalf of the Board for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the Contractor shall proceed to restore the Work. Loss or damage shall not affect the rights and obligations of either

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party under the Contract except that the Contractor shall be entitled to such reasonable extension of Contract Time relative to the extent of the loss or damage as the Consultant may recommend in consultation with the Contractor.

- 24.3.5 The Contractor shall be entitled to receive from the Board, in addition to the amount due under the Contract, the amount at which the Board's interest in restoration of the Work has been appraised, such amount to be paid as the restoration of the Work proceeds and as provided in **ITEM 13 - APPLICATIONS FOR PAYMENT** and **ITEM 14 - CERTIFICATES AND PAYMENTS**. In addition the Contractor shall be entitled to receive from the payments made by the insurer the amount of the Contractor's interest in the restoration of the Work.
- 24.4 In the case of loss or damage to the Work arising from the Work of an Other Contractor, the Board, in accordance with its obligations under **ITEM 9 - OTHER CONTRACTORS**, Paragraph 9.2, shall pay the Contractor the cost of restoring the Work as the restoration of the Work proceeds and in accordance with the requirements of **ITEM 13 - APPLICATIONS FOR PAYMENT** and **ITEM 14 - CERTIFICATES AND PAYMENTS**

24.5 Contractors' Equipment Insurance:

- 24.5.1 "All risks" contractors' equipment insurance covering construction machinery and equipment used by the Contractor for the performance of the Work, including boiler insurance on temporary boilers and pressure vessels, shall be in a form acceptable to the Board and shall not allow subrogation claims by the insurer against the Board. The policies shall be endorsed to provide the Board with not less than fifteen (15) days notice in writing in advance of cancellation, change, or amendment restricting coverage. Subject to satisfactory proof of financial capability by the Contractor for self-insurance, the Board agrees to waive the equipment insurance requirement.
- 24.5.2 The Contractor shall be responsible for deductible amounts under the policies except where such amounts may be excluded from the Contractor's responsibility by the terms of **ITEM 25 - PROTECTION OF WORK AND PROPERTY** and **ITEM 26 - DAMAGES AND MUTUAL RESPONSIBILITY**.
- 24.5.3 The Contractor shall not violate, nor knowingly permit to be violated, any conditions of the policies maintained according to the provisions of this Contract Requirement and it shall be the Contractor's duty and responsibility to impose upon each Sub-contractor the same responsibilities and obligations imposed upon the Contractor under such provisions.
- 24.5.4 If the full insurable value of the Work is substantially less than the Contract Price, the Board may reduce the amount of insurance required or waive the course of construction insurance requirement.
- 24.5.5 If the Contractor fails to provide or maintain insurance as required by the Contract Documents, then the Board shall have the right to provide and maintain such insurance and give evidence to the Contractor and the Consultant. The Contractor shall pay the cost thereof to the Board on demand or the Board may deduct the amount, which is due or may become due to the Contractor.
- 24.5.6 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the Place of the Work.

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25. PROTECTION OF WORK AND PROPERTY

- 25.1 The Contractor shall protect the Work and the Board's property and property adjacent to the Place of the Work from damage and shall be responsible for damage which may arise as the result of his or her operation under the Contract except damage which occurs as the result of:
- 25.1.1 errors in the Contract Documents, or
 - 25.1.2 acts or omissions by the Board, the Consultant, Other Contractors, their agents and employees.
- 25.2 Should the Contractor in the performance of this Contract damage the Work, the Board's property or property adjacent to the Place of Work, the Contractor shall be responsible for the making good of such damage at his or her expense.
- 25.3 Should damage occur to the Work or Boards property for which the Contractor is not responsible as provided in Paragraph 25.1 he or she shall make good such damage to the Work and if the Board so directs to the Board's property and the Contingency Allowance balance and Contract Time shall be adjusted in accordance with **ITEM 11 - CHANGES IN THE WORK**, and the value of the changes shall be determined in accordance with **ITEM 12 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK**.
- 25.4 Where permanent installations or other works, such as roads, curbs, sidewalks, boulevards, sodding, trees, hydrants, fencing and street lighting, abut, front and/or otherwise adjoin the Place of Work, the Contractor shall identify the conditions of same prior to the commencement of the Work and record the conditions in such a manner as directed by the Consultant, to indemnify the Board and Contractor against subsequent damage, which may be alleged by others. Should any damage occur, which is attributable to the Contractor, the Contractor shall be responsible to make good such damage at his or her own expense or pay all costs incurred by others in making good such damage.

26. DAMAGES AND MUTUAL RESPONSIBILITY

- 26.1 If either party to the Contract should suffer damage in any manner because of any wrongful act or neglect of the other party or of anyone for whom the other party is responsible in law, then that party shall be reimbursed by the other party in respect of such wrongful act or neglect if it be that of a third party.
- 26.2 Claims under this Contract Requirement shall be made in writing to the party liable within reasonable time after the first observance of such damage and may be adjusted by agreement or in the manner set out in **ITEM 7 - DISPUTES**.
- 26.3 If the Contractor has caused damage to the work of an Other Contractor on the Project, the Contractor agrees upon due notice to settle with such Other Contractor by agreement or arbitration, if he or she will so settle. If such Other Contractor sues the Board on account of damage alleged to have been so sustained, the Board shall notify the Contractor and may require the Contractor to defend the action at the Contractor's, expense. If a final order or judgment against the Board arises therefrom the Contractor shall pay or satisfy it and pay the costs incurred by the Board.
- 26.4 If the Contractor becomes liable to pay or satisfy a final order, judgment or award against the Board then the Contractor, upon undertaking to indemnify the Board against any and all liability for costs, shall have the right to appeal in the name of the Board such final order or judgment to any and all courts of competent jurisdiction.

27. TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

- 27.1 For the purposes of applicable environmental legislation, the Board shall be deemed to have control and management of the Place of the Work in respect to existing conditions.

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- 27.2 Prior to the Contractor commencing the Work, the Board shall:
- 27.2.1 take all reasonable steps to determine whether any toxic or hazardous substances or materials are present at the Place of the Work, and
 - 27.2.2 provide the Consultant and the Contractor with a written list of any such substances and materials.
- 27.3 The Board shall take all reasonable steps to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances or materials which were at the Place of the Work prior to the Contractor commencing the Work.
- 27.4 Unless the Contract expressly provides otherwise, the Board shall be responsible for taking all necessary steps, in accordance with legal requirements, to dispose of, store or otherwise render harmless toxic or hazardous substances or materials which were present at the Place of the Work prior to the Contractor commencing the Work.
- 27.5 If the Contractor, encounters toxic or hazardous substances or materials at the Place of the Work, or has reasonable grounds to believe that toxic or hazardous substances or materials are present at the Place of the Work which were not disclosed by the Board as required under Paragraph 27.2, or which were disclosed but have not been dealt with as required under Paragraph 27.4, the Contractor shall:
- 27.5.1 take all reasonable steps, including stopping the Work, to ensure that no person suffers injury, sickness, or death and that no property is injured or destroyed as a result of exposure to or the presence of the substances or materials, and
 - 27.5.2 immediately report the circumstances to the Consultant and the Board in writing.
- 27.6 If the Contractor is delayed in performing the Work or incurs additional costs as a result of taking steps required under Subparagraph 27.5.3, the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor and the Contractor shall be reimbursed for reasonable costs incurred as a result of the delay and as a result of taking those steps.
- 27.7 Notwithstanding Paragraphs 3.6 and 3.7 of **ITEM 3 - CONSULTANT**, or Paragraph 7.1 of **ITEM 7 -DISPUTES**, the Consultant may select and rely upon the advice of an independent expert in a dispute under Paragraph 27.6 and, in that case, the expert shall be deemed to have been jointly retained by the Board and the Contractor and shall be jointly paid by them.
- 27.8 The Board shall indemnify and hold harmless the Contractor, the Consultant, their agents and employees, from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances or materials which were at the Place of the Work prior to the Contractor commencing the Work. This obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set out in **ITEM 22 - INDEMNIFICATION** or which otherwise exist respecting a person or party described in this paragraph.
- 27.9 **ITEM 27 - TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS** shall govern over the provisions of **ARTICLE 6 of the AGREEMENT - RIGHTS AND REMEDIES** and **ITEM 26 -DAMAGES AND MUTUAL RESPONSIBILITY**.

28. BONDS

- 28.1 The Contractor, after receiving written notification from the Consultant, or where the Contract Price exceeds \$500,000, shall furnish and deliver to the Board within ten (10) days of such notification, and/or prior to the signing of the Contract: (1) a Labour and Material Bond, with a coverage limit of at least 50% of the Contract Price, which extends its protection to any Subcontractors supplying labour and materials to the Work; and (2) a Performance Bond, with a coverage limit of at least 50% of the Contract Price, and guaranteeing the faithful performance of the Contract in accordance with

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the Contract Documents including the requirements of **ITEM 29 - WARRANTY** and the payment of all obligations incurred in the event of the Contractor's default. Obligations incurred in the event of the Contractor's default shall include, but not be necessarily limited to the following:

- 28.1.1 The payment of all legal, accounting, architectural, engineering and other Consultants' expenses incurred by the Board in determining the extent of the Work executed, and any additional work required as a result of the interruption of the Work, and
- 28.1.2 The payment of additional expenses to the Board in the form of watchmen's services, light, heat, power, etc., payable over the period between the default of the Contract and the commencement of the Work under the terms of this Contract Requirement.
- 28.1.3 Without limiting the foregoing in any way, the Performance Bond shall indemnify and hold harmless the Board from and against any and all costs and expenses (including legal and architectural services and court costs) arising out of or as a consequence of any default of the Contractor under the Contract.
- 28.1.4 The Bonds shall be in the most recent form approved by the Canadian Construction Association modified as may be necessary to incorporate the requirements stated herein. For the amount of the Bonds, refer to the "**INSTRUCTIONS TO TENDERERS**".
- 28.2 The Contractor shall be responsible for notifying the surety company of any changes made to the Contract during the course of construction.
- 28.3 The premiums for all Bonds called for in the Tender Documents shall be included in the Contract Price.
- 28.4 Should the Board require provisions of any additional Bonds by the Contractor after the receipt of Tenders for the Work, the Contract Price shall be increased by all costs attributed to providing such Bonds. The Contractor shall promptly provide the Board through the Consultant, with any such Bonds that may be required.
- 28.5 The Bonds required hereunder must be issued by an insurer licensed under the Insurance Act to write surety and fidelity insurance and be approved by the Board.

29. WARRANTY

- 29.1 The warranty period with respect to the Contract is one year from the date of Substantial Performance of the Work or those periods specified in the Contract Documents for certain portions of the Work or Products.
- 29.2 The Contractor shall be responsible for the proper performance of the Work to the extent that the design and Contract Documents permit such performance.
- 29.3 Except for the provisions of Paragraph 29.6 and subject to Paragraph 29.2, the Contractor shall correct promptly, at the Contractor's expense, defects or deficiencies in the Work which appear prior to and during the warranty periods specified in the Contract Documents.
- 29.4 The Board, through the Consultant, shall promptly give the Contractor notice in writing of observed defects and deficiencies that occur during the warranty period.
- 29.5 The Contractor shall correct or pay for damage resulting from corrections made under the requirements of Paragraph 29.3.
- 29.6 The Contractor shall be responsible for obtaining Product warranties in excess of one year on behalf of the Board from the manufacturer. These Product warranties shall be issued by the manufacturer to the benefit of the Board.

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30. CONTRACTOR'S RESPONSIBILITIES AND CONTROL OF THE WORK

- 30.1 The Contractor shall have complete control of the Work and shall effectively direct and supervise the Work so as to ensure conformance with the Contract Documents. He or she shall be solely responsible for construction means, methods, techniques, sequences and procedures and for coordinating the various parts of the Work under the Contract. He or she shall also be responsible for the safe and proper execution of the work of Other Contractors as described in **ITEM 9 - OTHER CONTRACTORS**.
- 30.2 The Contractor shall be solely responsible for construction safety at the Place of the Work and for compliance with the rules, regulations and practices required by the applicable construction safety legislation. The Contractor shall be responsible for ensuring that all measures and procedures prescribed by the Occupational Health and Safety Act (Ont. Reg. 213/91 - Construction Projects), as amended and including the provisions of Bill 208 (Chapter 7, Statutes of Ontario, 1990) and the regulations contained therein, are carried out at the Place of the Work, and that every worker he or she assigns on the Work complies with the Act.
- 30.3 The Contractor shall have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structural and other temporary facilities and the design and execution of construction methods required in their use. The Contractor shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform these functions where required by law or by the Contract Documents and in all cases where such temporary facilities and their method of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.
- 30.4 Notwithstanding the provisions of Paragraphs 30.1 and 30.3, or provisions to the contrary elsewhere in the Contract Documents where such Contract Documents include designs for temporary structural and other temporary facilities or specify a method of construction in whole or in part, such facilities and methods shall be considered to be part of the design of the Work and the Contractor shall not be held responsible for the execution of such design or specified method of construction in the same manner that he or she is responsible for the execution of the Work.
- 30.5 The Contractor shall review the Contract Documents and shall promptly report to the Consultant any error, inconsistency or omission he or she may discover. Such review by the Contractor shall be to the best of his or her knowledge, information and belief and in making such review the Contractor does not assume any responsibility to the Board or the Consultant for the accuracy of the review. The Contractor shall not be liable for damage or costs resulting from such errors, inconsistencies or omissions in the Contract Documents which he or she did not discover. If the Contractor does discover any error, inconsistency or omission in the Contract Documents he or she shall not proceed with the work affected until he or she has received corrected or missing information from the Consultant.
- 30.6 The Contractor shall prepare and update as required a construction schedule indicating the major activities of the Work. The schedule shall be designed to ensure conformance with the required Contract Time. The schedule shall be submitted to the Board and the Consultant for their information within a reasonable time from the date of the Contract Award. The Contractor shall monitor the progress of the Work relative to the schedule and advise the Consultant of revisions required as the result of delays as provided in **ITEM 4 - DELAYS**, indicating the results expected from the resultant change in schedule. The construction schedule shall be submitted to the Consultant for his or her information and approval within thirty (30) days from the date of the Contract Award.

31. SUPERVISOR

- 31.1 The Contractor shall employ a competent supervisor and assistants as required, who shall be in attendance at the Place of Work while work is being performed. The supervisor shall devote his or her time

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exclusively to the work of the project from the commencement of the Work until Substantial Performance of the Work is reached.

- 31.2 The supervisor shall be satisfactory to the Consultant and shall not be changed except for good reason.
- 31.3 The supervisor shall represent the Contractor at the Place of the Work and instructions given to him or her by the Consultant shall be deemed to have been given to the Contractor.

32. LABOUR AND PRODUCTS

- 32.1 The Contractor shall provide and pay for labour, products, tools, construction machinery and equipment, water, heat, light, power, transportation and other facilities and services necessary for the performance of the Work in accordance with the Contract.
- 32.2 The Contractor shall maintain good order and discipline among his or her employees engaged on the Work and shall not employ on the Work anyone not skilled in the tasks assigned.
- 32.3 Products provided shall be new unless otherwise specified in the Contract Documents. Products which are not specified shall be of a quality best-suited to the purpose required and their use subject to the approval of the Consultant.
- 32.4 Products or materials which are specified by their proprietary names or by part or catalogue numbers shall form part of the Contract. Whenever more than one product or material is specified for one use, the Contractor may select for this use, any of the products or materials so specified unless the Drawings or the Specifications indicate otherwise.
- 32.5 Alternative products, materials or procedures shall not be included as part of the Contract Price, but shall be identified as amount(s) whereby the Contract Price shall be increased or decreased in value should the Consultant elect to accept such alternative products, or materials, or procedures.
- 32.6 Only products, materials or procedures specified or accepted in writing by the Consultant from the proposed list of alternatives, shall be permitted to be incorporated into the Work. Unspecified products or materials or rejected alternatives if built into the Work, shall be replaced with the specified or accepted product or material at no additional cost to the Board.
- 32.7 The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of products or materials used.

33. CONCEALED OR UNKNOWN CONDITIONS

- 33.1 If the Board or the Contractor discover conditions at the Place of the Work which are:
- 33.1.1 surface or otherwise concealed physical conditions which existed before the commencement of the Work which differ materially from those indicated in the Contract Documents: or
- 33.1.2 physical conditions of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents:
- then the observing party shall notify the other party in writing before conditions are disturbed and in no event later than five (5) Working Days after first observance of the conditions.
- 33.2 The Consultant will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the Contractor's cost or time to perform the Work, the Consultant, with the Board's approval, shall issue appropriate instructions for a

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change in the Work as provided in **ITEM 12 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK.**

- 33.3 If the Consultant finds that the conditions at the Place of the Work are not materially different or that no change in the Contract Price or the Contract Time is justified, the Consultant shall report the reasons for this finding to the Board and the Contractor in writing.

34. USE OF THE WORK

- 34.1 The Contractor shall confine his or her construction machinery and equipment, the storage of products, and the operations of his or her employees to limits indicated by laws, ordinances, permits or the Contract Documents and shall not unreasonably encumber the work in this regard.
- 34.2 The Contractor shall not load or permit to be loaded any part of the Work with a weight or force that will endanger the safety of the Work.
- 34.3 The Board shall have the right to enter and occupy the building in whole or in part for the purpose of placing fittings and equipment or for other uses before completion of the Work, if in the opinion of the Consultant, such entry and occupation does not prevent or interfere with the Contractor in the completion of the Contract within the time specified. Such entry and occupation shall not be considered as acceptance of the Work or in any way relieve the Contractor from his or her responsibility to complete the Contract.
- 34.4 The Board reserves the right to take over any completed portion of the building prior to the intended Completion Date, providing it does not, in the opinion of the Consultant, affect the completion of other work of the Contract. The Contractor shall not be entitled to indemnification if this occurs.
- 34.5 If the Board is forced by necessity to occupy the unfinished building on or after the intended Completion Date it shall not necessarily be deemed to imply acceptance of the Work, or that part of the Work, performed up to that time. The Contractor shall not be entitled to indemnification for any interference with his or her operations.
- 34.6 Any deficiencies that are required to be completed after final inspections, while areas of the building are occupied by the Board, shall be carried out at times as approved by the Consultant.

35. OCCUPANCY REQUIREMENTS

- 35.1 "Fit for Occupancy" shall, for the purposes of this Project, be defined as being sufficient completion of the Work to satisfy the following criteria:
- 35.1.1 The building structures are to be largely complete in structure, interior and exterior finish, mechanical/electrical/controls systems such that no portion of the work not yet complete can pose a safety, environmental or personal comfort hazard.
- 35.1.2 The building structures are fully weathertight and are fitted with all security hardware to allow the Board to lock all doors, windows and other openings.
- 35.1.3 All heating, ventilation and controls systems are functional to such a degree that the internal environment can be set and adjusted to provide and maintain personal comfort for the occupants.
- 35.1.4 All lighting and communications systems are fully functional.
- 35.1.5 All safety-related systems and features including but not necessarily limited to fire alarm, sprinklers, fire hose/standpipes, exit signs, emergency lighting and fire extinguishers are in place, tested and fully functional.

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- 35.1.6 The work has been inspected by all relevant authorities having jurisdiction and, where formal approvals are required to allow occupancy by school staff, teachers and students, all such approvals have been obtained.
- 35.1.7 The work has been cleaned as specified in the Contract Documents.
- 35.1.8 All work exterior to the building including but not necessarily limited to grading, paving, sodding, landscaping and fencing is sufficiently complete that the site may be used and occupied by school staff, teachers and students without unusual hazard. Any portions of the site which do not meet this criteria have been fully barricaded to prevent entry to those portions.
- 35.2 Determination as to whether or not the work is Fit for Occupancy will take place on a mutually agreed-upon date at the place of the Work. Representatives of the Board, the Consultant and the Contractor will view the work and the Consultant will request from the Contractor proof of full acceptance by the authorities having jurisdiction. The Consultant will decide as to whether or not the Work is Fit for Occupancy and his or her decision will be final.
- 35.3 Determination by the Consultant that the Work is Fit for Occupancy does not necessarily mean that Substantial Performance has been achieved. Refer to **ITEM 21 of the DEFINITIONS**, for requirements with respect to achievement of Substantial Performance.

36. CLEANUP AND FINAL CLEANING OF THE WORK

- 36.1 The Contractor shall maintain the Work in a tidy condition and free from the accumulation of waste products and debris, other than that caused by the Board, Other Contractors or their employees.
- 36.2 Prior to attaining Substantial Performance of the Work, the Contractor shall remove his or her surplus products, tools, construction machinery and equipment not required for the performance of the remaining work. He or she shall also remove waste products and debris other than that caused by the Board, Other Contractors or their employees, and leave the Work clean and suitable for occupancy by the Board.
- 36.3 Prior to Substantial Performance, the Contractor shall remove all stains and smudges from painted surfaces, hardware and other finished surfaces and shall have all glass washed and polished. The Contractor shall replace, without expense to the Board, all broken, damaged or unsatisfactory glazing.
- 36.4 The Completion of the Contract shall not be attained until the Contractor has removed his or her surplus products, tools, construction machinery and equipment. He or she shall also have removed waste products and debris, other than that caused by the Board, Other Contractors or their employees.

37. CUTTING AND REMEDIAL WORK

- 37.1 The Contractor shall do the cutting and remedial work required to make the several parts of the Work come together properly. All costs for cutting and remedial work shall be borne by the Contractor, including all such work for the mechanical and electrical trades, who shall coordinate and be responsible for each part of the Work affected.
- 37.2 The Contractor shall coordinate the Work to ensure that this requirement is kept to a minimum.
- 37.3 Should the Board, the Consultant, Other Contractors or anyone employed by them be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in **ITEM 12 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK**. However, the Contractor shall be responsible for all cutting and remedial work that is shown upon, or reasonably implied by, the Contract Documents, required to accommodate the work of Sub-contractors, Other Contractors, the Board and its employees.

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- 37.4 Cutting and remedial work shall be performed by specialists familiar with the products affected and shall be performed in a manner to neither damage nor endanger the Work.

38. REVIEW AND INSPECTION OF THE WORK

- 38.1 The Board and the Consultant or their authorized agents or representatives shall at all times have access to the Work. The Contractor shall ensure that proper safety equipment is worn by all visitors to the Place of the Work. If parts of the Work are in preparation at locations other than the Place of the Work, the Board and the Consultant or their authorized agents or representatives shall be given access to such work whenever it is in progress.
- 38.2 If work is designated for special tests, inspection, review or approvals in the Contract Documents, or by the Consultants instructions, or the laws or ordinances of the Place of the Work, the Contractor shall give the Consultant timely notice requesting review of the Work. Review of the Work by the Consultant shall be made promptly. The Contractor shall arrange for inspections by other authorities and shall give the Consultant timely notice of the date and time.
- 38.3 If the Contractor covers or permits to be covered Work that has been designated for special tests, inspections, review or approvals before such special tests, inspections, review or approvals are made, given or completed, he or she shall, if so directed, uncover such Work, have the inspections, review or tests satisfactorily completed and make good such Work at his or her own expense.
- 38.4 The Consultant may order any part or parts of the Work to be specially examined should he or she believe that such Work is not in accordance with the requirements of the Contract Document. If, upon examination such Work is found to be in accordance with the requirements of the Contract Documents, the Board shall pay the cost of examination and replacement.
- 38.5 The Contractor shall furnish promptly to the Consultant two (2) copies of Certificates and Inspection Reports relating to the Work.

39. DEFECTIVE WORK

- 39.1 Defective Work, whether the result of poor workmanship, use of defective products, or damage through carelessness or other act or omission of the Contractor and whether incorporated in the Work or not, which has been rejected by the Consultant as failing to conform to the Contract Documents shall be removed promptly from the Place of the Work by the Contractor. It shall be replaced or re-executed promptly in accordance with the Contract Documents at the Contractor's expense.
- 39.2 Other Contractor's Work destroyed or damaged by such removals or replacements shall be made good promptly at the Contractor's expense.
- 39.3 If in the opinion of the Consultant it is not expedient to correct defective Work or Work not performed in accordance with the Contract Documents, the Board may deduct from the monies otherwise due to the Contractor the difference in value between the Work as performed and that called for by the Contract Documents. If the Board and the Contractor do not agree on the difference in value, they shall refer the matter to the Consultant, whose decision shall be final.
- 39.4 If the Contractor does not remove the rejected products or Work within the time fixed by written notice, the Board may remove them and may store such material at the expense of the Contractor. If the Contractor does not pay the expense of such removal within five (5) days thereafter, the Board may, upon ten (10) days written notice, sell such materials at auction or at private sale for the costs and expenses.

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40. SHOP DRAWINGS

- 40.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, products and other data which the Contractor provides to illustrate details of a portion of the Work.
- 40.2 The Contractor shall arrange for the preparation of clearly-identified Shop Drawings as required by the Contract Documents or as the Consultant may reasonably request.
- 40.3 Prior to submission to the Consultant the Contractor shall review all Shop Drawings. By this review the Contractor represents that he or she has determined and verified all field measurements, field construction criteria, materials, catalogue numbers and similar data, or will do so, and that he or she has checked and co-ordinated each Shop Drawing with the requirements of the Work and of the Contract Documents. The Contractor's review of each Shop Drawing shall be indicated by stamp, date, and signature of the person responsible. At the time of submission the Contractor shall notify the Consultant in writing of any deviations in the Shop Drawings from the requirements of the Contract Documents.
- 40.4 The Contractor shall submit Shop Drawings to the Consultant for his or her review with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the work of Other Contractors. If either the Contractor or the Consultant so requests they shall jointly prepare a schedule fixing the dates for submission and return of Shop Drawings. Shop Drawings shall be submitted in the form of reproducible transparencies or prints as the Consultant may direct.
- 40.5 The Consultant will review and return Shop Drawings in accordance with any schedule agreed upon, or otherwise with reasonable promptness so as to cause no delay. The Consultant's review will be for conformity to the design concept and for general arrangement only and such review shall not relieve the Contractor of responsibility for errors or omissions in the Shop Drawings or of responsibility for meeting all requirements of the Contract Documents unless a deviation on the Shop Drawings has been approved in writing by the Consultant.
- 40.6 The Contractor shall make any changes in Shop Drawings which the Consultant may require consistent with the Contract Documents and resubmit unless otherwise directed by the Consultant. When resubmitting, the Contractor shall notify the Consultant in writing of any revisions other than those requested by the Consultant.
- 40.7 The Contractor shall be responsible for obtaining and distributing all Shop Drawings required by Sub-contractors and suppliers, and distributing copies to all authorities requiring same.

41. CASH ALLOWANCES

- 41.1 The Contract Price includes Cash Allowances, if any, stated in the Contract Documents.
- 41.2 Cash Allowances, unless otherwise specified, cover the net cost to the Contractor of services, products, construction machinery and equipment, freight, unloading, handling, storage, installation and other authorized expenses incurred in performing the work stipulated under the Cash Allowances.
- 41.3 The Contract Price, and not the Cash Allowances, includes the Contractor's overhead and profit in connection with such Cash Allowances.
- 41.4 Where costs under a Cash Allowance exceed the amount of the Allowance, the excess to the Cash Allowance shall not be increased for overhead and profit. The Contractor shall substantiate the excess incurred and shall submit same to the Consultant for approval and payment as per Paragraph 41.5.
- 41.5 Upon Substantial Performance of the Work, the total of the actual costs incurred for Cash Allowances shall be identified and the total sum expended for all Cash Allowances indicated.

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- 41.6 In such cases where the total sum expended against the cash allowances exceeds the total sum of all the Cash Allowances carried, the Contractor shall be compensated for any excess incurred and substantiated, plus an allowance for overhead and profit, as set out in the Contract Documents.
- 41.7 In such cases where the total sum expended for the Cash Allowances is less than the total sum of the Allowances, the surplus shall be credited, as set out in the Contract Documents.
- 41.8 A schedule shall be prepared jointly by the Consultant and Contractor to show when items called for under Cash Allowances must be authorized by the Consultant for ordering purposes so that the progress of the Work is not delayed.

42. CONTINGENCY ALLOWANCE

- 42.1 The Contract Price includes the Contingency Allowance, if any, stated in the Contract Documents.
- 42.2 Expenditures under the Contingency Allowance shall be authorized in accordance with **ITEM 11 - CHANGES IN THE WORK** and the value shall be determined in accordance with **ITEM 12 - VALUATION AND CERTIFICATION OF CHANGES IN THE WORK**.
- 42.3 The Contract Price shall not include any Contractor's overhead and/or profit for the Contingency Allowance.
- 42.4 Upon Completion of the Contract, the Contract Price shall be adjusted by written order to provide for any excess or deficit in the Contingency Allowance.

~END~